

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

RICHARD RODRICK MACDONALD,

Petitioner,

versus

DIRECTOR, TDCJ-CID,

Respondent.

CIVIL ACTION NO. 9:19-CV-189

MEMORANDUM OPINION AND ORDER

This petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 challenged a conviction for tampering with physical evidence. A Final Judgment was previously entered dismissing the petition as barred by the applicable statute of limitations. Petitioner did not file a notice of appeal.

Petitioner has now filed a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b). Rule 60(b) provides that

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by any opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

In his motion, petitioner sets forth several alleged deficiencies in his state court proceedings. He asserts the state court did not have jurisdiction over his case, that he received an illegal sentence and that his counsel was ineffective.

These assertions relate to the merits of the petition, not to whether the petition was barred by limitations. Moreover, while petitioner contends his sentence was illegal and that the state court lacked jurisdiction, these contentions do not permit him to avoid the limitations bar established in 28 U.S.C. § 2244(d). As a result, petitioner's motion does not provide him with a basis for relief. It is accordingly

ORDERED that the motion for relief from judgment (#21) is **DENIED**.

SIGNED at Beaumont, Texas, this 9th day of July, 2024.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE